

Subsec. (d)(6). Pub. L. 110-343, §302(b)(2), added par. (6).

Subsec. (g). Pub. L. 110-343, §302(a), substituted “placed in service—” for “placed in service after December 31, 2007” and added pars. (1) and (2).

2007—Subsec. (c)(3). Pub. L. 110-172 substituted “part 3280” for “section 3280”.

2005—Subsec. (b)(2). Pub. L. 109-135 substituted “subsection (c)(2)(B)” for “subsection (c)(3)(B)”.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title III, §302(f), Oct. 3, 2008, 122 Stat. 3845, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made [by] this section [amending this section] shall apply to expenditures made after December 31, 2008.

“(2) MODIFICATION OF QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—The amendments made by subsection (e) [amending this section] shall apply to property placed in service after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE

Pub. L. 109-58, title XIII, §1333(c), Aug. 8, 2005, 119 Stat. 1030, provided that: “The amendments made by this section [enacting this section and amending section 1016 of this title] shall apply to property placed in service after December 31, 2005.”

§ 25D. Residential energy efficient property

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 30 percent of the qualified solar electric property expenditures made by the taxpayer during such year,

(2) 30 percent of the qualified solar water heating property expenditures made by the taxpayer during such year,

(3) 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year,

(4) 30 percent of the qualified small wind energy property expenditures made by the taxpayer during such year, and

(5) 30 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during such year.

(b) Limitations

(1) Maximum credit

The credit allowed under subsection (a) (determined without regard to subsection (c)) for any taxable year shall not exceed—

(A) \$2,000 with respect to any qualified solar water heating property expenditures,

(B) \$500 with respect to each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made,

(C) \$500 with respect to each half kilowatt of capacity (not to exceed \$4,000) of wind turbines for which qualified small wind energy property expenditures are made, and

(D) \$2,000 with respect to any qualified geothermal heat pump property expenditures.

(2) Certification of solar water heating property

No credit shall be allowed under this section for an item of property described in subsection

(d)(1) unless such property is certified for performance by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed.

(c) Limitation based on amount of tax; carry-forward of unused credit

(1) Limitation based on amount of tax

In the case of a taxable year to which section 26(a)(2) does not apply, the credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

(2) Carryforward of unused credit

(A) Rule for years in which all personal credits allowed against regular and alternative minimum tax

In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) Rule for other years

In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by paragraph (1) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified solar water heating property expenditure

The term “qualified solar water heating property expenditure” means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

(2) Qualified solar electric property expenditure

The term “qualified solar electric property expenditure” means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

(3) Qualified fuel cell property expenditure

The term “qualified fuel cell property expenditure” means an expenditure for qualified fuel cell property (as defined in section 48(c)(1)) installed on or in connection with a dwelling unit located in the United States and

used as a principal residence (within the meaning of section 121) by the taxpayer.

(4) Qualified small wind energy property expenditure

The term “qualified small wind energy property expenditure” means an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(5) Qualified geothermal heat pump property expenditure

(A) In general

The term “qualified geothermal heat pump property expenditure” means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

(B) Qualified geothermal heat pump property

The term “qualified geothermal heat pump property” means any equipment which—

(i) uses the ground or ground water as a thermal energy source to heat the dwelling unit referred to in subparagraph (A) or as a thermal energy sink to cool such dwelling unit, and

(ii) meets the requirements of the Energy Star program which are in effect at the time that the expenditure for such equipment is made.

(e) Special rules

For purposes of this section—

(1) Labor costs

Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in subsection (d) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(2) Solar panels

No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) of subsection (d) solely because it constitutes a structural component of the structure on which it is installed.

(3) Swimming pools, etc., used as storage medium

Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(4) Dollar amounts in case of joint occupancy

In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by two or more individuals the following rules shall apply:

(A) **MAXIMUM EXPENDITURES.**—The maximum amount of expenditures which may be taken into account under subsection (a) by

all such individuals with respect to such dwelling unit during such calendar year shall be—

(i) \$6,667 in the case of any qualified solar water heating property expenditures,

(ii) \$1,667 in the case of each half kilowatt of capacity of qualified fuel cell property (as defined in section 48(c)(1)) for which qualified fuel cell property expenditures are made,

(iii) \$1,667 in the case of each half kilowatt of capacity (not to exceed \$13,333) of wind turbines for which qualified small wind energy property expenditures are made, and

(iv) \$6,667 in the case of any qualified geothermal heat pump property expenditures.

(B) **ALLOCATION OF EXPENDITURES.**—The expenditures allocated to any individual for the taxable year in which such calendar year ends shall be an amount equal to the lesser of—

(i) the amount of expenditures made by such individual with respect to such dwelling during such calendar year, or

(ii) the maximum amount of such expenditures set forth in subparagraph (A) multiplied by a fraction—

(I) the numerator of which is the amount of such expenditures with respect to such dwelling made by such individual during such calendar year, and

(II) the denominator of which is the total expenditures made by all such individuals with respect to such dwelling during such calendar year.

(C) Subparagraphs (A) and (B) shall be applied separately with respect to expenditures described in paragraphs (1), (2), and (3) of subsection (d).

(5) Tenant-stockholder in cooperative housing corporation

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(6) Condominiums

(A) In general

In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

(B) Condominium management association

For purposes of this paragraph, the term “condominium management association” means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(7) Allocation in certain cases

If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(8) When expenditure made; amount of expenditure**(A) In general**

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

(B) Expenditures part of building construction

In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

(9) Property financed by subsidized energy financing

For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(C)).

(f) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(g) Termination

The credit allowed under this section shall not apply to property placed in service after December 31, 2016.

(Added Pub. L. 109-58, title XIII, §1335(a), Aug. 8, 2005, 119 Stat. 1033; amended Pub. L. 109-135, title IV, §402(i)(1), (2), (3)(E), Dec. 21, 2005, 119 Stat. 2612, 2614; Pub. L. 109-432, div. A, title II, §206, Dec. 20, 2006, 120 Stat. 2945; Pub. L. 110-343, div. B, title I, §106(a)-(c)(3)(A), (c)(4)-(e)(1), Oct. 3, 2008, 122 Stat. 3814-3816.)

AMENDMENT OF SECTION

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109-135, see Effective and Termination Dates of 2005 Amendment note below.

AMENDMENTS

2008—Subsec. (a)(4). Pub. L. 110-343, §106(c)(1), added par. (4).

Subsec. (a)(5). Pub. L. 110-343, §106(d)(1), added par. (5).

Subsec. (b)(1). Pub. L. 110-343, §106(b)(1), amended par. (1) as amended by Pub. L. 110-343, §106(c)(2) and (d)(2), by redesignating subpars. (B) to (E) as (A) to (D), respectively, and striking out former subpar. (A) which read as follows: “\$2,000 with respect to any qualified solar electric property expenditures.”

Subsec. (b)(1)(D). Pub. L. 110-343, §106(c)(2), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 110-343, §106(d)(2), added subpar. (E).

Subsec. (c). Pub. L. 110-343, §106(e)(1), amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) related to carryforward of unused credit.

Subsec. (d)(4). Pub. L. 110-343, §106(c)(3)(A), added par. (4).

Subsec. (d)(5). Pub. L. 110-343, §106(d)(3), added par. (5).

Subsec. (e)(4)(A). Pub. L. 110-343, §106(b)(2), amended subpar. (A) as amended by Pub. L. 110-343, §106(c)(4) and (d)(4), by redesignating cls. (ii) to (v) as (i) to (iv), respectively, and striking out former cl. (i) which read as follows: “\$6,667 in the case of any qualified solar electric property expenditures.”

Subsec. (e)(4)(A)(iv). Pub. L. 110-343, §106(c)(4), added cl. (iv).

Subsec. (e)(4)(A)(v). Pub. L. 110-343, §106(d)(4), added cl. (v).

Subsec. (g). Pub. L. 110-343, §106(a), substituted “December 31, 2016” for “December 31, 2008”.

2006—Subsecs. (a)(1), (b)(1)(A). Pub. L. 109-432, §206(b)(1), substituted “solar electric property expenditures” for “photovoltaic property expenditures”.

Subsec. (d)(2). Pub. L. 109-432, §206(b)(2), substituted “solar electric property expenditure” for “photovoltaic property expenditure” in heading and text.

Subsec. (e)(4)(A)(i). Pub. L. 109-432, §206(b)(1), substituted “solar electric property expenditures” for “photovoltaic property expenditures”.

Subsec. (g). Pub. L. 109-432, §206(a), substituted “2008” for “2007”.

2005—Subsec. (b)(1). Pub. L. 109-135, §402(i)(1), inserted “(determined without regard to subsection (c))” after “subsection (a)” in introductory provisions.

Subsec. (c). Pub. L. 109-135, §402(i)(3)(E), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.” See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (e)(4)(A), (B). Pub. L. 109-135, §402(i)(2), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

“(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

“(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2007, except that amendment by section 106(b) of Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2008, see section 106(f)(1), (2) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 23 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(E) of Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Re-

lief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendments by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which they relate, except that amendment by section 402(i)(3)(E) of Pub. L. 109-135 is applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

EFFECTIVE DATE

Section applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109-58, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

§ 26. Limitation based on tax liability; definition of tax liability

(a) Limitation based on amount of tax

(1) In general

The aggregate amount of credits allowed by this subpart (other than sections 23, 24, 25B, 25D, and 30D) for the taxable year shall not exceed the excess (if any) of—

- (A) the taxpayer's regular tax liability for the taxable year, over
- (B) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of subparagraph (B), the taxpayer's tentative minimum tax for any taxable year beginning during 1999 shall be treated as being zero.

(2) Special rule for taxable years 2000 through 2008

For purposes of any taxable year beginning during 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, or 2008, the aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

- (A) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and
- (B) the tax imposed by section 55(a) for the taxable year.

(b) Regular tax liability

For purposes of this part—

(1) In general

The term “regular tax liability” means the tax imposed by this chapter for the taxable year.

(2) Exception for certain taxes

For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

- (A) section 55 (relating to minimum tax),
- (B) section 59A (relating to environmental tax),
- (C) subsection (m)(5)(B), (q), (t), or (v) of section 72 (relating to additional taxes on certain distributions),
- (D) section 143(m) (relating to recapture of proration of Federal subsidy from use of mortgage bonds and mortgage credit certificates),

(E) section 530(d)(4) (relating to additional tax on certain distributions from Coverdell education savings accounts),

(F) section 531 (relating to accumulated earnings tax),

(G) section 541 (relating to personal holding company tax),

(H) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

(I) section 1374 (relating to tax on certain built-in gains of S corporations),

(J) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts),

(K) subparagraph (A) of section 7518(g)(6) (relating to nonqualified withdrawals from capital construction funds taxed at highest marginal rate),

(L) sections 871(a) and 881 (relating to certain income of nonresident aliens and foreign corporations),

(M) section 860E(e) (relating to taxes with respect to certain residual interests),

(N) section 884 (relating to branch profits tax),

(O) sections 453(I)(3) and 453A(c) (relating to interest on certain deferred tax liabilities),

(P) section 860K¹ (relating to treatment of transfers of high-yield interests to disqualified holders),

(Q) section 220(f)(4) (relating to additional tax on Archer MSA distributions not used for qualified medical expenses),

(R) section 138(c)(2) (relating to penalty for distributions from Medicare Advantage MSA not used for qualified medical expenses if minimum balance not maintained),

(S) sections 106(e)(3)(A)(ii), 223(b)(8)(B)(i)(II), and 408(d)(9)(D)(i)(II) (relating to certain failures to maintain high deductible health plan coverage),

(T) section 170(o)(3)(B) (relating to recapture of certain deductions for fractional gifts),

(U) section 223(f)(4) (relating to additional tax on health savings account distributions not used for qualified medical expenses),

(V) subsections (a)(1)(B)(i) and (b)(4)(A) of section 409A (relating to interest and additional tax with respect to certain deferred compensation),

(W) section 36(f) (relating to recapture of homebuyer credit), and

(X) section 457A(c)(1)(B) (relating to determinability of amounts of compensation).

(c) Tentative minimum tax

For purposes of this part, the term “tentative minimum tax” means the amount determined under section 55(b)(1).

(Added § 25, renumbered § 26, Pub. L. 98-369, div. A, title IV, § 472, title VI, § 612(a), July 18, 1984, 98 Stat. 827, 905; amended Pub. L. 99-499, title V, § 516(b)(1)(A), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99-514, title II, § 261(c), title VI, § 632(c)(1), title VII, § 701(c)(1), Oct. 22, 1986, 100 Stat. 2214, 2277, 2340; Pub. L. 100-647, title I, §§ 1006(t)(16)(C),

¹ See References in Text note below.